



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 126

[Docket No. USCG-2011-0966]

RIN 1625-AB82

Alternate Tonnage Threshold for Oil Spill Response Vessels

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

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SUMMARY: The Coast Guard is establishing an alternate size threshold based on the measurement system established under the International Convention on Tonnage Measurement of Ships, 1969, for Oil Spill Response Vessels (OSRVs), which are properly certificated under 46 CFR subchapter L. The present size threshold of 500 gross registered tons is based on the U.S. regulatory measurement system. This rule provides an alternative for owners and operators of offshore supply vessels (OSVs) that may result in an increase in oil spill response capacity and capability.

DATES: This interim rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before [INSERT DATE 60

DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG-2011-0966 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, e-mail or call Mr. Brian T. Ellis, Coast Guard Marine Safety Center; e-mail [brian.t.ellis@uscg.mil](mailto:brian.t.ellis@uscg.mil), telephone 202-475-5636. If you have questions on viewing

or submitting material to the docket, call Renee V. Wright,  
Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

A. Submitting comments:

If you submit a comment, please include the docket number for this rulemaking (USCG-2011-0966), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2011-0966" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

B. Viewing comments and documents:

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2011-0966" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act:

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

#### D. Public meeting

We do not now plan to hold a public meeting, but you may submit a request for one to the docket using one of the methods specified under ADDRESSES. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

#### II. Abbreviations

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
GRT	Gross Register Tons
GT ITC	Gross Tonnage International Tonnage Convention
OSV	Offshore Supply Vessel
OSRV	Oil Spill Response Vessel
U.S.C.	United States Code

#### III. Regulatory History

This rule is issued as an interpretive rule as authorized by section 702 of the Coast Guard Authorization Act of 1996 (the Act) (Pub. L. 104-324; October 19, 1996) (46 U.S.C. 14104). The Conference Report on the Act (H. Rept. 104-854) states that, because this rule is considered to be an interpretive rule under the Administrative Procedure Act (5 U.S.C. 551 et seq.), the notice of

proposed rulemaking, the comment requirements, and the 30-day delay of the effective date under 5 U.S.C. 553 are not required.<sup>1</sup> Therefore, this interpretive rule is effective on the date of publication in the Federal Register.

However, the Coast Guard values input from the public, and as such, we are issuing this interpretive rule as an interim rule, and seeking comments from the public. Please see the section above titled "Public Participation and Request for Comments."

#### IV. Basis and Purpose

This interpretive rule establishes an alternate tonnage threshold at 6000 Gross Tonnage International Tonnage Convention (GT ITC) for oil spill response vessels (OSRVs) that are also certificated as offshore supply vessels (OSVs). The alternate tonnage framework enacted by the Coast Guard Authorization Act of 1996 provided a mechanism for the Coast Guard to regulate vessels under tonnages assigned using the system of the International Convention on Tonnage Measurement of Ships, 1969 (implemented into U.S. law as the "convention measurement system"), instead of the U.S. domestic measurement system (now referred to in U.S. law as the "regulatory measurement

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<sup>1</sup> House Report 104-854 at p. 116.

system") (46 U.S.C. 14104(b)). The selected alternate tonnage threshold is consistent with a 6000 GT ITC alternate threshold established for OSVs in 1996.<sup>2</sup> As discussed further below, this will allow owners of OSVs regulated under the alternate tonnage framework to also have their vessels certificated as OSRVs without the need to meet significantly higher standards applicable to tank vessels.

Use of alternate tonnage facilitates the design, construction, and operation of vessels without the need for the fitting of undesirable design features, whose sole purpose is to artificially reduce tonnages assigned under the regulatory measurement system. Because the rulemaking provides for optional use of an alternative approach to meet an existing requirement, there is no mandatory cost to the public. The authority for this rulemaking is the 1996 Coast Guard Authorization Act (P.L. 104-324), as codified in 46 U.S.C. Sections 3702(f)(2)(A) and 14104(b).

## V. Discussion of the Interpretive Rule

Both domestically and internationally, a vessel's gross or net tonnage assignment is the basis for applying requirements of a multitude of laws, regulations, and

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<sup>2</sup>See Offshore Supply Vessels: Alternate Tonnage, 61 FR 66613 (Dec. 18, 1996), amending 46 CFR 125.160.



standards, including the 500 gross register ton (GRT) size threshold that is the subject of this interpretive rule. The primary U.S. domestic measurement system used to assign tonnages to U.S. flag vessels evolved from an older British measurement system and involves a complex series of exemptions and deductions. It is now a subset of the regulatory measurement system, and is called the "standard measurement system". This system is highly susceptible to manipulation through inclusion of costly and inefficient design features, such as so-called "tonnage openings" and "deep frames". Although in 1986 the U.S. implemented the internationally accepted measurement system of the International Convention on Tonnage Measurement of Ships, 1969, the standard measurement system may still be used to measure any U.S. flag vessel, at the vessel owner's option.

To help facilitate conversion to tonnage assignments under the convention measurement system, in 1996 Congress gave the Coast Guard the authority to establish tonnage thresholds based on the convention measurement system as an alternative to existing thresholds specified in U.S. law that were based on the regulatory measurement system. This authority included a mandate that any regulations used to establish alternate tonnage thresholds be interpretive rules. While the Coast Guard promptly issued an

interpretive rule establishing an alternate tonnage threshold bounding the upper size for OSVs (61 FR 66614 dated December 18, 1996), little additional progress has been made on this initiative due to its complexity, broad scope, and competing priorities.

Experience with cleanup of the 2010 *Deepwater Horizon* oil spill generated interest, in both the public and private sectors, for expanding spill response capability and capacity by using certificated OSVs as OSRVs. Many of the newer OSVs that were constructed under the alternate tonnage framework established in 1996 exceed the 500 GRT threshold for multi-service OSRVs specified in 46 U.S.C. 3702(f)(2)(A). Therefore, they are currently precluded from also being certificated as OSRVs, unless they meet tank vessel standards. This rule, in effect, removes this obstacle to OSRV certification. Safety, design and operational standards for OSRVs may be the subject of a future rulemaking by the U.S. Coast Guard.

Tonnage thresholds in all tonnage-based laws of the United States are applied to the vessel using convention measurement system tonnage when a vessel is optionally assigned convention measurement system tonnage only (i.e., GRT tonnage not assigned). This includes the 6000 GT ITC alternate tonnage threshold established under this rule.

The vessel's assigned regulatory measurement tonnage is used to apply these thresholds when the option is not exercised. This includes the 500 GRT threshold that is the subject of this rule. There are no restrictions that would preclude the vessel owner, or a future owner, from reverting to a previous decision in this regard.

## VI. Regulatory Analyses

We developed this interpretive rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

### A. Regulatory Planning and Review

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This interpretive rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This interpretive rule establishes a tonnage threshold of 6000 GT ITC for OSRVs under the alternate tonnage framework, which offers a mechanism for the Coast Guard to regulate vessels under tonnages assigned using the convention measurement system, instead of the regulatory measurement system. Therefore, this interpretive rule provides an option to owners of vessels certificated as OSVs (under 46 CFR subchapter L) to seek OSRV certification based on this alternate tonnage threshold. We believe that a vessel owner will opt to use the alternate tonnage framework described in this interpretive rule only if it will be beneficial to the owner's business.

We expect this interpretive rule to be beneficial to the public and to the maritime industry because it provides the opportunity to increase oil spill response capacity and capability.

This interpretive rule provides for optional and voluntary use of an alternative approach to meet an

existing requirement. Accordingly, there is no mandatory cost to the public.

#### B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), this rule is considered an interpretive rule and is not subject to the requirement under 5 U.S.C. 553(b) for publication of a general notice of proposed rulemaking. Therefore, under 5 U.S.C. 601, it is not a rule that is subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

As previously discussed in Section III (Regulatory History) of this preamble, the Coast Guard is issuing this rule as an interpretive rule as authorized by section 702 of the Coast Guard Authorization Act of 1996 (the Act) (Pub. L. 104-324; October 19, 1996). The Conference Report on the Act (H. Rept. 104-854) states that, because this rule is considered to be an interpretive rule under the Administrative Procedure Act (5 U.S.C. 551 et seq.), the notice of proposed rulemaking and comment requirements and the 30-day delay of effective date under 5 U.S.C. 553 would not be required in order to expedite this rulemaking.

This interpretive rule provides for optional and voluntary use of an alternative approach to owners of vessels certificated as OSVs to seek an OSRV certification

based on an alternate tonnage threshold. We believe that a vessel owner will opt to use the alternate tonnage framework described in this interpretive final rule only if it will be beneficial to the owner's business. We expect this interim rule to be beneficial to the public and to the maritime industry because it provides the opportunity to increase the availability and capacity of OSRVs.

### C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Brian T. Ellis, U. S. Coast Guard Marine Safety Center, Tonnage Division, 202-475-5636, Brian.T.Ellis@uscg.mil. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business

and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

#### D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the

expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### I. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.



#### J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why

using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### M. Environment

We have analyzed this interpretive rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This interpretive rule is categorically excluded under section 2.B.2, figure 2-1, paragraph (34)(d) of the Instruction. Exclusion under paragraph (34)(d) applies because this interpretive rule pertains to regulations concerning documentation and admeasurement of vessels. An environmental analysis

checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 46 CFR Part 126

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 126 as follows:

PART 126-INSPECTION AND CERTIFICATION

1. The authority citation for part 126 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3205, 3306, 3307, 3702, 14104; 46 U.S.C. Chapter 701; Executive Order 11735, 38 FR 21243; 3 CFR 1971-1975 Comp., p. 793; Department of Homeland Security Delegation No. 0170.1.

2. Add § 126.225 to read as follows:

§ 126.225 Alternate tonnage for offshore supply vessels seeking oil spill response vessel certification.

An offshore supply vessel certificated under this subchapter that is less than 500 gross register tons (GRT) as measured under section 14502 of Title 46, United States Code, or 6,000 gross tonnage (GT ITC) as measured under section 14302 of Title 46, United States Code when GRT is not assigned, may also be certificated as an oil spill response vessel.

Dated: ***December 5, 2011***

J. G. LANTZ

Director of Commercial Regulations and Standards

U.S. Coast Guard

[FR Doc. 2011-31708 Filed 12/09/2011 at 8:45 am;

Publication Date: 12/12/2011]